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CITATIONS

678676—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 714

UNITED STATES OF AMERICA, PETITIONER

v.

EDMUND CARL HEINE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered on November 8, 1945, reversing respondent's conviction of conspiracy to violate Section 2 (a) of the Espionage Act of June 15, 1917.

OPINION BELOW

The opinion of the circuit court of appeals (R. 598–606) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on November 8, 1945 (R. 607), and

a petition for rehearing (R. 607–616) was denied on November 27, 1945 (R. 617). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

QUESTION PRESENTED

Whether Section 2 (a) of Title I of the Espionage Act of June 15, 1917, which makes it an offense to transmit or attempt to transmit to a foreign nation information relating to the national defense, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, applies to the transmittal of national defense information obtained and compiled from sources accessible to the public.

STATUTE INVOLVED

The pertinent provisions of the Espionage Act of June 15, 1917, c. 30, Title I, 40 Stat. 217, 218, 219, 50 U. S. C. 32, 34, are as follows:

> SEC. 2 (a). Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign

country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided,* That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

* * * * *

> SEC. 4. If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. * * *

STATEMENT

An indictment in two counts was returned against respondent and others in the United States District Court for the Eastern District of New York on July 15, 1941, charging, in the first count, a conspiracy to violate Section 3 of Title VIII of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 226,[1] in violation of Section 37 of the Criminal Code, 18 U. S. C. 88, and, in the second count, a conspiracy to violate Section 2 (a) of Title I of the Espionage Act, in violation of Section 4 of Title I of that Act (*supra*, pp. 2–4; R. 2–37, 163, 518).

After a jury trial, respondent and thirteen other defendants were found guilty on each count (R. 575–578)[2] and respondent was sentenced on

[1] This Section makes it an offense for one to act as an agent for a foreign government without prior notification to the Secretary of State. It was amended by the Act of March 28, 1940, c. 72, Sec. 6, 54 Stat. 80, and now appears as 22 U. S. C. 601. The amendment increased the penalty for violation of the Section from five to ten years.

[2] The remaining defendants pleaded guilty to one or both counts of the indictment. See *United States* v. *Ebeling*, 146 F. 2d 254 (C. C. A. 2), in which the court below affirmed defendant Ebeling's conviction on his separate appeal.

count 1 to imprisonment for a term of two years and to pay a fine of $5,000, and on count 2, to imprisonment for a term of eighteen years, the prison sentences to run concurrently (R. 582–583). On respondent's separate appeal to the Circuit Court of Appeals for the Second Circuit, his conviction on count 1 was affirmed,[3] and his conviction on the second count reversed (R. 598–607).

In count 2, it is alleged that from April 1, 1936, to the date of the filing of the indictment, July 15, 1941, the defendants conspired with each other and with the Government of the German Reich and others to communicate, deliver, and transmit to the Government of the German Reich and representatives and citizens thereof information relating to the national defense of the United States, with intent and reason to believe that such information would be used to the injury of the United States and to the advantage of the German Reich. The general nature of the conspiracy charged was that the German Reich would employ the defendants for the purpose of transmitting such information, and that certain of the defendants, including respondent, would be employed in various capacities and activities in the United States so as to be in a position to acquire the information which the conspirators would transmit to Germany by radio and mail.

[3] As appears from the circuit court of appeals' opinion (R. 599), respondent has already served the sentence on the first count.

Numerous overt acts committed by the defendants pursuant to the conspiracy and to effect its objects are set forth, including respondent's mailing, on July 2, 1940, of a certain letter at Detroit, Michigan (R. 19–37).

In the court below, respondent conceded that the evidence was sufficient to establish the existence of the conspiracy, but denied the sufficiency of the evidence to show that he was connected with or participated in it, and complained of error in the trial court's failure to instruct the jury that he should be acquitted unless the jury could find that the information transmitted was "secret or confidential" and "outside the public domain" (R. 586, 590). The pertinent evidence relating to respondent may be summarized as follows:

Respondent was born in Germany in 1891, came to the United States in 1914, and was naturalized in 1920 (R. 282, 285, 288). He secured a position with the Ford Motor Company in 1918 and worked for Ford until May 1935. Beginning in 1926 he represented Ford in Germany, and, when he resigned, he was managing director of Ford's German subsidiary. (R. 287–301.) After leaving Ford, respondent worked for the Chrysler Corporation in Portugal, Spain, and in North Africa until the end of 1938 (R. 301–302).

Respondent then went to Germany for a vacation, and in the summer of 1939 he received a letter from the Volkswagenwerke, a German cor-

poration manufacturing low-priced cars and about to engage in the manufacture of airplanes, offering him an executive position (R. 304, 454–455, 495–496). In November 1939, respondent spoke to Dr. Porsche, an executive of the corporation, and said he would think about the offer (R. 304, 455). The following month an American consul told respondent that if he wished to avoid expatriation, he had better return to the United States, and respondent told Porsche about this in March 1940. Porsche said this was satisfactory because the corporation would not need respondent until June. At this meeting respondent agreed to endeavor to secure in the United States refunds from American companies on contracts for American machinery which the corporation had entered into, but which could not be performed because of the war. He also agreed to get information as to the American automobile industry. (R. 304–307, 456–458.) In addition, respondent agreed with Dr. Wertz, in charge of Volkswagenwerke's aviation department, to obtain information concerning the American aviation industry. In order to make sure that this information would reach Wertz, respondent agreed at Wertz's suggestion to mail his reports to persons outside Germany whose names and addresses Wertz supplied; two of these persons were the defendants Lilly Stein and Heinrich Eilers in New York City. It was also agreed that respondent would not sign his

own name to the reports, but would use certain aliases. (R. 307–310, 319–321, 459–460, 473, 485.) Respondent was authorized to deduct his expenses from any moneys he might collect on the contracts, and he was told that when he got back from the United States he would be given a position with the corporation at 5,000 marks a month (R. 362–363, 463–464, 498–499). Subsequently, Porsche and Wertz furnished respondent with lists of questions they wished answered in respect of the American automobile and aviation industries (R. 308–309, 326–327, 460–461). After respondent left Wertz, he was commissioned by a Jewish organization in Frankfort to aid it in sending Jews to the United States. For this he received 4,000 marks ($1,500) from the organization. Finally, he undertook, at no compensation, for a friend, a German licensee of an American company, to explain to the American company that the licensee was not transmitting royalties because of the war situation. (R. 322–323, 325, 463–465.)

Respondent arrived at New York City on May 13, 1940 (R. 327–328). During the voyage, he looked over Wertz' list of questions, which asked for information as to "tendency in aircraft construction towards stainless steel or aluminum, volume of production, regarding the location of the various plants, what type sport, commercial, and military planes were manufacturing," "deliveries to England and France," "trend toward liquid or

air-cooled engines," "exhaust silencers," and "propeller noise" (R. 327–328, 487–488). The more respondent studied the list, "the more I thought it was a pretty tall order. First of all, I was not conversant with aeroplanes. Secondly, from my position there were questions * * * asked * * * of a rather confidential nature, and finally I concluded the best thing is to tear it up and give him an outline of the questions which he was asking as to make it a fairly complete portrayal of the aeroplane situation in the United States" (R. 328). However, before he destroyed the list, respondent studied it so that he knew the questions "almost by heart" (R. 461–462). He did not destroy the list of questions concerning the American automobile industry (R. 461).

After respondent arrived in the United States, he "got right down to business" (R. 329). In the next few months he endeavored to execute the commissions he had undertaken in Germany. He was unsuccessful in doing anything for the Jewish organization or in collecting any money on the Volkswagenwerke contracts (R. 331–333, 343–347, 363, 448–449). However, he did obtain information as to the automobile industry which he mailed directly to Porsche, signing his own name to the reports. He also used his own name in writing to the Jewish organization. (R. 368, 370–371, 373–374, 466–467.) In addition, he secured considerable information on the aviation industry for Wertz, which he mailed in the form of nine reports to the defendant Lilly Stein, signing each

of them with the agreed alias of "Heinrich." These were dated from June 5, 1940, to August 12, 1940, and they dealt with the following subjects: development of Diesel engines, manufacturers of airplanes and airplane parts, deliveries of airplanes to England and France and their orders for airplanes, United States military and commercial airplane production, the use of stainless steel and plastics in the manufacture of airplanes, performance of airplane motors, electric power plants for airplanes, and the use of hydraulic presses in the manufacture of airplanes. (Govt. Ex. 111–119, R. 126–159, 391–434.) Respondent testified that all of the information in the reports he obtained from public sources, admitting that on one or two occasions he made misrepresentations in order to secure the information. The sources were aviation magazines and books, other magazines, newspapers, correspondence, conversations with persons having knowledge of the aviation industry, and exhibits at the World's Fair in New York. (R. 331, 336–338, 340 341–343, 344, 348, 352–355, 368, 375–376, 377–401, 405–434, 450–451, 481–482.)

Having completed his missions in the United States, and also because he was unable to secure employment here, respondent endeavored in September and October 1940 to get a passport to return to Germany, but the State Department refused his application (R. 341, 365–367, 449–450, 483–484).

At the trial, respondent took the position that under Section 2 (a) of the Espionage Act, it was necessary for the Government to prove that the information which he transmitted was secret and confidential (see R. 263–264, 274–279, 385, 516, 560–565, 568–569, 574–575). The trial judge, however, instructed the jury that Section 2 (a) is not limited to information derived from secret or confidential government sources (R. 544–545). He also charged the jury that national defense was "a general concept of broad connotations referring to the military and naval establishments and the related activities of national preparedness. You will see that this embraces all that constitutes production, including volume and the necessary time of production and design of implements of war, including airplanes and all that pertains to their operations, their design and their construction. The information to be obtained need not have been intended to the injury of the United States. If it was intended to be used to the advantage of Germany, that is sufficient to establish guilt, provided that was one of the objects of the conspiracy as alleged" (R. 528–529).

The court below reversed respondent's conviction on count 2, being of the view that Section 2 (a) does not apply to the transmittal of national defense information, with the intention that it be used to the injury of the United States or to the advantage of a foreign nation, when the armed forces have not withheld such information from

the public. It concluded "that whatever it was lawful to broadcast throughout the country it was lawful to send abroad; and that it was lawful to prepare and publish domestically all that [respondent] put in his reports" (R. 603–606).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that Section 2 (a) of the Espionage Act does not apply to the transmittal of information relating to the national defense which is accessible to the public, even when the transmitter acts with the intention that the information be used to the injury of the United States or to the advantage of a foreign nation.

2. In failing to hold that Section 2 (a) punishes the transmission of such information to a foreign nation with intent that it is to be used to the injury of the United States or to the advantage of such nation.

3. In reversing respondent's conviction on count 2 of the indictment.

REASONS FOR GRANTING THE WRIT

Convinced that Section 2 (a) of the Espionage Act may work a drastic "repression of the free exchange of information", and prompted, therefore, carefully to scrutinize the statute "lest extravagant and absurd consequences result" (R. 602), the court below restricted the scope of Section 2 (a) although the statutory language affords no warrant whatever for the particular limitation

imposed, and the legislative history is, in the language of the court below (R. 605), equivocal. In so doing, the circuit court of appeals may well have invited an even more drastic repression of information than would follow upon the broadest construction of the Espionage Act and has certainly decided an important question of federal law which has not been, but which should be, settled by this Court.

1. Section 2 (a) of the Espionage Act provides for the punishment of one who "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits * * * to any foreign government * * *, either directly or indirectly, any * * * information relating to the national defense * * *." Nowhere in this broad provision is there a suggestion that the transmittal of national defense information, by one having the requisite guilty intent, is exempted from the Act's prohibitions because the information has not been withheld from the public by the armed services (cf. R. 603). Concededly, Section 2 (a) may be construed sweepingly, and care should be taken to avoid harsh and apparently unintended consequences, but we think that its application to respondent Heine is neither harsh nor unintended. If Section 2 (a) is to be construed narrowly, as it may well be, the appropriate limitation of the statute, is to be found

in a strict construction of the words "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation", rather than in reading into the statute an unexpressed requirement. Moreover, as this Court stated in *Gorin* v. *United States,* 312 U. S. 19, 27–28, these are the "obvious delimiting words in the statute".

In holding that the phrase "information relating to the national defense" cannot include information to the dissemination of which the armed services have "consented", albeit by a failure to suppress that information (R. 603–604), the court below reached a conclusion that we believe is inconsistent with the views expressed by this Court in the *Gorin* case, 312 U. S. 19. That case involved not only Section 2 (a) of the Espionage Act, but also Section 1 (b) of that Act, which makes it an offense, having the "intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation", to obtain documents "connected with the national defense". This Court suggested no such restrictive reading of the term "national defense" as the court below has adopted, but, on the contrary, held that "national defense" "is a generic concept of broad connotations, referring to the military and naval establishments *and the related*

activities of national preparedness". 312 U. S. at 28. [Italics supplied.]

This Court also said, in the course of its opinion in the *Gorin* case (*ibid*), that "Where there is no occasion for secrecy, as with reports relating to national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government." This statement, adverted to by the court below in support of its conclusion (R. 605), has no application here since there is no question but that the "evidence as a whole supported a finding that Heine was engaged in collecting all available information about our production of airplanes, so that the Reich should be advised of our defense in the event of war" (R. 601), and, therefore, that Heine had the intent required by the statute. Indeed, this statement fairly implies that the publication of information in this country under official auspices does not *per se* take that information out of the coverage of the Espionage Act, but simply goes to the question of the defendant's intent in transmitting the information.*

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* Moreover, we suggest that there may well be a distinction between information released by the services and information never withheld (but cf. R. 603). In the case of the former, an affirmative administrative judgment has been made that the information can, with safety, be made available to the general public; as to the latter, those in charge of security may have made no judgment at all and their failure to restrict circulation of the information in question cannot be accorded the same weight.

2. The legislative history of the Espionage Act affords no support for the construction adopted by the court below. As the court itself noted "the debates on the floor of both Houses do not tell much" and the hearings reflect only a concern on the part of a number of witnesses at the possible suppression of information (R. 604). A report of the House Judiciary Committee was given more weight by the court below, although the court recognized that the word "secrets", used in the committee report, "is an equivocal word whose definition might prove treacherous" (R. 605). A brief summary of the legislative history of the Act will, we suggest, indicate that whatever restrictive light is cast on the Act contains no hint that only information withheld by the services from the public is to be protected.

Section 1 of S. 8148, 64th Cong., 2d sess., which was the first bill of the series which preceded the enactment of the present Espionage Act, made it an offense for anyone to do specified acts "for the purpose of obtaining information respecting the national defense to which he is not lawfully entitled." Senator Cummins, who bore the burden of the opposition, pointed out that the bill did not in terms refer to "secrets". 54 Cong. Rec. 3489. In this connection, Senator Overman, in charge of the bill, stated on several occasions that it was intended to cover only "secrets" of our national defense and to punish spies. E. g., 54 Cong. Rec. 3489, 3586. He also referred to mili-

tary places or to places in which military plans, codes, and signals are kept. E. g., 54 Cong. Rec. 3600. But Senator Cummins' criticism was directed at the vagueness of the language used in Section 1 of the bill. Thus, he said, "I believe most of the offenses named in chapter 1 ought not to exist without an intent to injure our country or to aid another. * * * I can not believe that we ought to make it a criminal offense for persons to secure information respecting the national defense in time of peace, unless there is some evil intent in securing the information." 54 Cong. Rec. 3498–3499; see also 54 Cong. Rec. 3484–3489, 3491–3492, 3588, 3596, 3599. In the next Congress, Senator Cummins is not found to renew his criticism. Section 1 (a) (and Section 2 (a) by reference to Section 1 (a)) of S. 2, 65th Cong., 1st sess., which was a redraft of S. 8148, contained a provision substantially identical with that now appearing in the Act—that the information must be obtained "with intent or knowledge that the information * * * is to be used to the injury of the United States, or to the advantage of a foreign nation." In this connection Senator Overman stated that the redraft removed some of the drastic features of the former bill, and Sections 1 (a) and 2 (a) as redrafted were approved without discussion. 55 Cong. Rec. 778.

In the House bill, H. R. 291, 65th Cong., 1st sess., the language employed in Sections 1 and 2 was that the information must be obtained "with

intent or knowledge, or reason to believe that the information * * * is to be used to the injury of the United States." The House Committee on the Judiciary in its report on the bill (H. Rep. No. 30, 65th Cong., 1st sess., p. 10) stated that the purpose of the language was "to avoid making innocent acts criminal," and Representative Webb, in charge of the bill, said that the former bill in this respect was too vague and indefinite. 55 Cong. Rec. 1590–1591. The language of the new bill in this respect appears to have been satisfactory to the House. See 55 Cong. Rec. 1601, 1696, 1700, 1717–1718, 1721, 1756.

In Report No. 30, *supra,* the House Committee on the Judiciary, in referring to Section 4, the censorship provision, which was thereafter eliminated,[5] stated (p. 10): "The committee realize that the section as recommended gives the President broad powers, but it must be admitted by all patriotic persons anxious for the success of our arms that in times like these through which we are now going it is important that the Commander in Chief shall have authority to prevent the pub-

[5] This Section provided that during war or when war was imminent, the President was authorized to prohibit the publication of information relating to the national defense, and that the violation of such a regulation was an offense. A somewhat analogous provision appeared in Section 2 (c) of the Senate bill, S. 2, 65th Cong., 1st sess. The censorship provisions in both bills were eliminated in conference. See H. Rep. No. 69, 65th Cong., 1st sess., p. 19; 55 Cong. Rec. 1816, 3306–3307.

lication of national defense secrets, which would be useful to the enemy and, therefore, harmful to the United States." The court below construed this as meaning that "the Judiciary Committee of the House supposed that the act was directed at 'secrets' " (R. 604–605). While it may be that Section 4, which did not include an "intent" requirement like that embodied in Sections 1 and 2, was perhaps to be limited to "secret" information, it does not follow that Sections 1 and 2, which were to be operative only when a guilty intent was present, were likewise designed to protect merely "secret" information.

But even if the information protected is limited to "national defense secrets", it does not follow that the secret nature of the information may arise only from the fact that it is held confidential by the Government. As the Government suggested in its brief in the *Gorin* case, 312 U. S. 19, the secret nature of information may arise also "from the fact that through independent investigations the offender has secretly accumulated data which has military importance such that it should not be placed at the disposal of a foreign nation" (p. 60 of the Brief for the United States, No. 87, October Term 1940).

That Congress could have intended to exempt from the prohibitions of the Espionage Act one who, like respondent Heine, gathered, condensed, arranged, and transmitted to the German Gov-

ernment all the material he could get "that would contribute to as full a conspectus as possible of the airplane industry" (R. 601), is exceedingly difficult to imagine. As this war has again taught us, espionage consists, in large part, of just such collection, collation, and transmission of bits of information which, when put together, supply a comprehensive view of the nation's war plans and the state of its preparations for defense. Only when one loses sight of the particular facts in this case, and speculates as to the possible application of the statute in other circumstances, do the difficulties, in the light of which the court below read the legislative history, arise.

3. The question involved is one of substantial importance in the enforcement of the Espionage Act. As shown by the instant prosecution, the Government has taken the position that the Act operates against spies who obtain information relating to the national defense, even though that information has not been withheld from the public by the Government. The effect of the decision below is to limit substantially the coverage of the Act in respects which are of manifest concern to the Government. It permits spies to collect and to transmit without inhibition information connected with the national defense which, while in the public domain, should not be given passage beyond our shores. Thus, if the Government, either through inadvertence or choice, fails to

withhold information related to the national defense, and that information finds its way into the public press, a foreign espionage agent is fully authorized to transmit it to his employer, whatever his bad intention.

The decision of the court below may well operate as an invitation to those in charge of national security to withhold and restrict the circulation of national defense information to a far greater extent than has heretofore been deemed necessary. If the sanctions on the transmission of information in the public domain but related to the national defense are removed, as they are under the decision below, even when the transmission is engaged in with the intent to injure the United States or to give an advantage to a foreign nation, caution may well compel responsible security officers to withhold information that might otherwise be released in order to avoid illegitimate use of that information. Such restriction would operate, however, to prevent even the innocent use of information, directly or indirectly related to national defense, for scientific and educational purposes.

A decision by this Court of the question here involved will undoubtedly be useful to Congress in the drafting of new legislation now under consideration as a result of scientific discoveries relating to national defense.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

JANUARY 1946.

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BRIEF ON BEHALF OF RESPONDENT, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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The opinion of the United States Circuit Court of Appeals reversing the respondent's conviction of conspiracy to violate Section 2(a) of the Espionage Act of June 15, 1917, has now been reported in 151 Federal Reporter, 2d Series, page 813, and reference is hereby made to that opinion as fully as if quoted in the brief. This opinion was unanimous. It was written by L. HAND, Circuit Judge, and concurred in by CHASE and FRANK, Judges. It reviews very carefully and ably the facts and the law in the case. It is submitted herewith as a part of this brief on behalf of the respondent.

It is respectfully urged that the decision of the United States Circuit Court of Appeals is so clearly correct that

there is no ground or reason that the writ of certiorari prayed for should be granted. The gravamen of the opinion of L. HAND, Judge, is:

> "It is enough in the case at bar to hold, as we do, that whatever it was lawful to broadcast throughout the country it was lawful to send abroad; and that it was lawful to prepare and publish domestically all that Heine put in his reports."

Certainly this is a reasonable and proper interpretation of the law. The learned Solicitor General makes the following statement in his petition of the reasons why such petition should be granted:

> "The decision of the court below may well operate as an invitation to those in charge of national security to withhold and restrict the circulation of national defense information to a far greater extent than has heretofore been deemed necessary. If the sanctions on the transmission of information in the public domain but related to the national defense are removed, as they are under the decision below, even when the transmission is engaged in with the intent to injure the United States or to give an advantage to a foreign nation, caution may well compel responsible security officers to withhold information that might otherwise be released in order to avoid illegitimate use of that information. Such restriction would operate, however, to prevent even the innocent use of information, directly or indirectly related to national defense, for scientific and educational purposes.
>
> A decision by this Court of the question here involved will undoubtedly be useful to Congress in the drafting of new legislation now under consideration as a result of scientific discoveries relating to national defense."

We submit that these reasons are neither persuasive nor substantial. The contention of the Government in this case that it was unlawful to send abroad information which was

in no sense secret or confidential, information that it was lawful to broadcast throughout the country, seems, with all deference, rather preposterous on its face. The discussion of the question in the opinion of the Circuit Court of Appeals is most interesting and convincing. In his petition the learned Solicitor General claims that the decision "may well operate as an invitation to those in charge of national security to withhold and restrict the circulation of national defense information to a far greater extent than has heretofore been deemed necessary." We fail to perceive any cogency in this argument. It will still be proper after this decision to publish domestically any information which it was proper to publish before the decision. We submit that there is no ground for the apprehension stated in the petition. Furthermore, the contention that the decision by this Court of the question here involved will be useful to the Congress in the drafting of new legislation does not, we submit, offer any reason why the petition should be granted.

CONCLUSION

For the reasons stated this petition for a writ of certiorari should be denied.

Respectfully submitted,

GEORGE GORDON BATTLE,
Counsel for Respondent.